

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANDRE MONTEEK EDWARDS,

Petitioner,

Case Number: 2:19-CV-10376
HON. DENISE PAGE HOOD

v.

THOMAS WINN,

Respondent.

/

**ORDER REGARDING PENDING MOTIONS AND DIRECTING
RESPONDENT TO FILE SUPPLEMENTAL ANSWER**

Michigan state prisoner Andre Monteek Edwards filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Edwards challenges his convictions for second-degree murder, Mich. Comp. Laws § 750.317; felon in possession of a firearm, Mich. Comp. Laws § 750.224f; and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. Now before the Court are seven motions filed by Edwards.

Edwards has filed three motions to amend. Shortly after filing his first motion to amend (ECF No. 9), Edwards filed a motion to withdraw the motion (ECF No. 10). Respondent did not file a response to either of these motions and the Court discerns no prejudice to Respondent if the Court allows Edwards to

withdraw his first motion to amend. The Court will grant the motion to withdraw.

In his second motion to amend (ECF No. 11), Edwards seeks to add an additional ineffective assistance of trial counsel claim. Federal Rule of Appellate Procedure Rule 15(a)(1)(A), allows a party to amend a petition once as a matter of course within “21 days after serving it.” Fed. R. Civ. P. 15(a)(1)(A). Here, more than 21 days passed between service of the petition and the date Edwards filed his second motion to amend. Therefore, Edwards may not amend his petition as a matter of course. If a party may not amend a petition as a matter of course, a party may do so by leave of court pursuant to Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) provides that the court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Edwards’ request to amend his petition does not appear to be made in bad faith or to be an attempt to delay the proceedings. The additional issue he seeks to raise appears to have been exhausted in state court. Further, Respondent does not oppose the motion. The Court will grant the motion and require Respondent to file a supplemental pleading addressing this claim.

In his third motion to amend (ECF No. 19), Edwards moves to amend his reply brief. The amended reply brief provides additional arguments in support of the petition and does not raise any additional claims. Respondent does not oppose the motion. The Court will grant the motion.

Edwards filed a motion to hold his habeas petition in abeyance (ECF No. 16), and later filed a motion to withdraw the motion (ECF No. 18). The Court will grant the motion to withdraw.

Finally, Edwards asks the Court to remand this matter to state court for an evidentiary hearing. (ECF No. 21.) This court lacks authority to remand a federal habeas corpus proceeding to state court. *United States v. Robinson*, 407 F. Supp.2d 437, 444 (E.D. Mich. 2005). *See also Magwood v. Smith*, 791 F.2d 1438, 1449 (11th Cir. 1986) (“[A] federal district court or court of appeals has no appellate jurisdiction over a state criminal case and hence has no authority to ‘remand’ a case to the state courts.”); *Coombs v. Diguglielmo*, 616 F.3d 255, 265 n.10 (3d Cir. 2010) (holding that federal court “do[es] not have authority under the federal habeas statutes, 28 U.S.C. § 2241 or § 2254, to remand a habeas corpus petition to a state court for an evidentiary hearing”); *Coulter v. McCann*, 484 F.3d 459, 466 (7th Cir. 2007) (“There is no authority in the habeas corpus statute for a federal court to remand or transfer a proceeding to the competent state court.”). The Court will deny this motion.

Accordingly, IT IS ORDERED that:

- (1) Petitioner’s Motion to Withdraw his Motion to Amend (ECF No. 10) is GRANTED and the Motion to Amend (ECF No. 9) is

- WITHDRAWN;
- (2) Petitioner's Motion to Amend (ECF No. 11) is GRANTED and Respondent is directed to file a supplemental answer addressing the claim added by amendment within FORTY-FIVE DAYS from the date of this Order;
- (3) Petitioner's Motion to Withdraw his Motion to Hold Petition in Abeyance (ECF No. 18) is GRANTED and the Motion to Hold Petition in Abeyance (ECF No. 16) is WITHDRAWN;
- (4) Petitioner's Motion to Amend Reply Brief (ECF No. 19) is GRANTED; and
- (5) Petitioner's Motion to Remand for Evidentiary Hearing (ECF No. 21) is DENIED.

s/Denise Page Hood
Chief Judge, United States District Court

Dated: March 6, 2020